REMARKS

The Final Office Action mailed February 8, 2007 has been reviewed and the comments therein were carefully considered. The Final Office Action states that claim 18 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Pub. No. 20030207696 ("Willenegger"), and claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,381,232 ("Strawczynski"). The Final Office Action also states that claims 1, 7, 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,018,662 ("Periyalwar") in view of U.S. Patent No. 6,647,262 ("Demetrescu"). The Final Office Action also states that claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Periyalwar in view of Demetrescu in further view of U.S. Patent No. ("Scheller"). The Final Office Action also states that claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Periyalwar in view of Demetrescu in further view of U.S. Patent No. 5,864,546 ("Campanella"). The Final Office Action states that claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Periyalwar in view of Demetrescu in further view of U.S. Patent No. 6,691,273 ("Wager"). The Final Office Action states that claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Periyalwar in view of Demetrescu in further view of U.S. Patent No. 6,594,798 ("Chou"). The Final Office Action states that claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willenegger in view of U.S. Patent No. 6,145,109 ("Schuster"). The Final Office Action states that claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willenegger in view of Strawczynski in further view of U.S. Patent No. 6,122,293 ("Frodigh"). Claims 1, 18 and 24 are independent claims. Claims 2-17 and 19-23 are dependent claims. Applicant respectfully traverses this rejection.

Independent Claims 1, 18 and 24 With Respect to the "If-statement"

Applicant respectfully asserts that the rejection of each independent claim is improper, as the Office Action does not consider every feature of the claims. The Office Action states that "if the system can operate normally without an error, the limitations would be inconsequential. Therefore the invention is interpreted as such." An "if ... then" type limitation recites a feature where the method executes the "then" portion of the limitation when the "if" portion of the limitation is met. In fact, the Federal Circuit has recognized that conditional limitations are

acceptable and indicate an order:

> The body of the claims, by using conditional language in the "booting normally" step ("if said testing step indicates a normal boot sequence") indicates that the "testing" step must occur before the computer boots normally.

Altiris Inc. v. Symantec Corp., 65 USPQ2d 1865, 1871 (Fed. Cir. 2003).

The Office Action rejects independent claims 1, 18 and 24 without considering these features of the claims. However, Applicant submits that such a rejection improperly ignores features of the claims and that the Office Action must show each and every feature of a claim present in the prior art.

In particular, MPEP §2131 states that "to anticipate a claim, the reference must teach every element of the claim," and MPEP § 2143.03 states that "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

The "if-statement" that the Office Action refers to does not change this requirement and Applicant submits that the Office Action has not shown any references that teach, disclose or suggest correcting an error "in accordance with a first [FEC] code by replacing a complete packet" "if an error is detected" as taught by claims 1 and 18. Similarly, the Office Action has not shown any references that disclose at least the feature of "if a packet number is missing from the received data packets, inserting a null symbol to signify an erasure within the second burst" of claim 24. Therefore, with respect to independent claims 1, 18 and 24, and each of the claims that ultimately depends from claim 1 or claim 18 (claims 2-17 and 19), Applicant respectfully submits that the Office Action has not addressed each feature of the claims and that each of the claims is therefore allowable.

Independent Claim 1 and Dependent Claims 2-16

The Office action rejects independent claim 1 under 35 U.S.C. 103 as being unpatentable over Periyalwar in view of Demetrescu. Periyalwar, at most, discloses soft handoff in a CDMA system using multiple channels. Nothing in either Periyalwar or Demetrescu discloses, teaches or suggests "correcting the error in accordance with a first forward error correcting (FEC) code by replacing a complete packet" in response to detecting an error resulting from handover. In

fact, nothing in either reference discloses errors occurring within a burst of data, forward error correcting codes, or correcting errors generally. Applicant submits that claims 2-17 are allowable for at least these reasons.

Independent Claim 18 and Dependent Claim 19

Additionally, with respect to independent claim 18, the Office Action states that Willinegger discloses "receiving a first burst of data packets." As asserted in the previous response, Applicant submits that nothing in Willinegger discloses base stations broadcasting bursts of data packets. In fact, Willinegger states that the design considerations for the invention in Willinegger are "different from those of point-to-point communication services (such as voice and packet data)." Applicant was not able to find anything in the Office Action addressing this feature of the present invention or this argument from the previous response. Applicant also submits that dependent claim 19 is allowable for at least the above reasons.

Independent Claim 20 and Dependent Claims 21-23

The Office Action has maintained the rejection of independent claim 20 under 35 U.S.C. 103 as being unpatentable over Willinegger in view of Strawczynski, in further view of Frodigh. Previously, Applicant asserted that the Willenegger and Strawczynski at most disclose using predetermined FEC codes and do not disclose the feature relating to determining a variable FEC code. The Office Action merely states that "[d]ue to the broadness of the claim, a variable forward error correcting code ... is disclosed by Strawczynski," referencing column 4, lines 28-31. However, Strawczynski does not disclose "determining a variable forward error correcting" code, which is a feature of claim 20. The "broadness of the claim" alleged by the Office Action is limited by the language in the claim, which in this case would include determining a variable FEC code. Applicant respectfully submits that the Office Action still has not pointed to any reference disclosing such a feature.

Additionally, Applicant submits that the Office Action still has not presented a prima facie case of motivation to combine Willenegger with Strawczynski and Frodigh. The Office Action does not point to any part of any of the references for motivation to combine the

references and simply states that "it would have been obvious to ... incorporate FEC coding within handover procedures to provide error-free communication ... apply the FEC code to all packets to check for errors in all packets within the communication process," and "incorporate Frodigh's disclosure to provide a more desired degree of robustness to accommodate the increase number of users by decreasing interference." Moreover, even if the Office had shown proper motivation to combine the reference, the resultant invention from the combination of Willenegger, Strawczynski and Frodigh would not result in the invention claimed in independent claim 20 or dependent claims 21-23. Strawczynski is directed to "methods and apparatus that optimize uplink backhaul bandwidth and processor usage during handoffs." (column 2, lines 26-27; emphasis added). In contrast, claims 20-23 disclose a service source sending information via multiple base stations to a wireless terminal.

For at least these reasons, Applicant respectfully submits that independent claim 20 and dependent claims 21-23, which depend from claim 20, are allowable.

Independent Claim 24

Applicant also submits that the Office Action has not addressed Applicant's previous arguments with respect to claim 24. The Office Action merely states that certain features are being ignored because it contains an if statement and rejects claim 24 on the same basis as the previous Office Action. However, nothing in Strawczynski discloses base stations broadcasting bursts of data packets or "calculating the missing data packet from the second burst of data packets in accordance with" an FEC code.

Respectfully submitted,

Date: June 8, 2007   By: _____
                                                  CHARLES L. MILLER, REG. NO. 43,805
                                                  BANNER & WITCOFF, LTD.
                                                  10 South Wacker Drive
                                                  Suite 3000
                                                  Chicago, IL 60606
                                                  Telephone: 312-463-5000
                                                  Facsimile: 312-463-5001